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Supreme Court, U. S.  
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IN THE  
**SUPREME COURT OF THE UNITED STATES**

No. **76-3981**

THE CITIZENS AND SOUTHERN NATIONAL BANK,  
Petitioner,

vs.

NICK BOUGAS,  
Respondent.

**PETITION FOR WRIT OF CERTIORARI**

To the Court of Appeals of the  
State of Georgia

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No. ....

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vs.

NICK BOUGAS,  
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**PETITION FOR WRIT OF CERTIORARI**  
To the Court of Appeals of the  
State of Georgia

Petitioner, The Citizens and Southern National Bank, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of Georgia (Docket No. 51622) entered in this proceeding on May 6, 1976.

**OPINIONS BELOW**

The opinion of the Georgia Court of Appeals, is reported in 138 Ga. App. 706 (1976) and appears in the Appendix, *infra*, pp. A-1 to A-4. The order of the State Court of DeKalb County, Georgia, is unreported and appears in the Appendix, *infra*, p. A-5). The judgment of the Court of Appeals, and the orders denying rehearing, petition for certiorari and reconsideration appear in the Appendix, *infra*, pp. A-6—A-9.

## JURISDICTION

The judgment of the Georgia Court of Appeals was entered on May 6, 1976, affirming the order of the State Court of DeKalb County dated August 22, 1975. The Court of Appeals denied a timely motion for rehearing on May 21, 1976. Thereafter, on June 30, 1976, the Georgia Supreme Court denied a petition for certiorari, one Justice dissenting; a motion for reconsideration was finally denied by the Supreme Court on July 15, 1975, two Justices dissenting. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3) (1970).

## QUESTION PRESENTED

Whether, for purposes of laying venue in transitory<sup>1</sup> actions prosecuted in the Georgia state courts, 12 U.S.C. §94 requires that Petitioner, a national banking association, be sued only in Chatham County, Georgia, the county in which its charter<sup>2</sup> was issued?

## STATUTE INVOLVED

12 U.S.C. §94 (1970) provides:

"Actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

<sup>1</sup> The "local action" exception to 12 U.S.C. §94 is discussed n. 16, *infra*.

<sup>2</sup> The "charter" county is that particular county specified in the national bank's organization certificate. See 12 U.S.C. §22 (1970).

## STATEMENT OF THE CASE

This case, involving a suit for alleged unlawful redemption and conversion of a particular savings bond, was filed in the State Court of DeKalb County, Georgia, on June 30, 1975, by Nick Bougas (hereinafter "Bougas") against The Citizens and Southern National Bank (hereinafter "C&S"), a national banking association chartered in Chatham County, Georgia, under the laws of the United States. C&S duly answered and concurrently filed a motion to dismiss the complaint, showing as grounds therefor that 12 U.S.C. §94 lays exclusive venue, in transitory actions against C&S, in Chatham County, Georgia. R. 11-16. On August 22, 1975, the C&S motion to dismiss was denied without discussion of the 12 U.S.C. §94 privilege. R. 17; App. A-5.

On appeal to the Georgia Court of Appeals,<sup>3</sup> C&S reiterated the 12 U.S.C. §94 mandate restricting venue in transitory suits against a national bank to the county in which its charter was issued.<sup>4</sup> In its decision of May 6, 1976, the Court of Appeals recognized both the applicability of 12 U.S.C. §94 to C&S as an "association under this chapter" (App. A-2), and that 12 U.S.C. §94 posits mandatory venue in suits against national banking associations. App. A-2. Furthermore, the Court of Appeals implicitly acknowledged that the charter of C&S was issued in Chatham County, Georgia (App. A-1, A-4; see R. 11-13), and that a national banking association is "established" within the meaning of 12 U.S.C. §94 only in the federal district

<sup>3</sup> C&S perfected its interlocutory appeal by duly obtaining a certificate for immediate review from the trial court (R. 18) and an order granting interlocutory appeal from the Court of Appeals (R. 19); a notice of appeal was filed in the State Court of DeKalb County on September 30, 1975. R. 1-2.

<sup>4</sup> The C&S arguments are set forth in the "Brief of Appellant," which is included in the certified record herein but is not separately paginated as part of the record.

encompassing the county specified in its charter and not in whatever district it may do business. App. A-2, A-3, A-4.

However, although cognizant of the significant federal and state authority substantiating that "established" and "located" in 12 U.S.C. §94 are functionally synonymous words designating a single federal district and state county, respectively, in which transitory actions against national banks can be prosecuted (*see* App. A-2—A-3), the Court of Appeals dichotomized these two words and held:

"We conclude that when a national bank, 'established' in this state, operates and maintains in counties other than the county of its principal office, branches at which it conducts its general banking business, the corporation is present at all times [in] each such branch and is 'located' therein within the meaning of this Act of Congress. Thus, it is subject to suit in a state court in such county, otherwise having jurisdiction, just as it is in the county wherein its principal office is located," App. A-4.

The C&S motion for rehearing in the Court of Appeals,<sup>3</sup> the petition for certiorari in the Georgia Supreme Court and the motion for reconsideration were substantially based upon the erroneous interpretation of 12 U.S.C. §94 by the Court of Appeals and were denied without opinion.

Petitioner seeks review of the May 6, 1976 judgment of the Georgia Court of Appeals, the highest appellate court which has ruled on the federal question involved herein.

<sup>3</sup> The filing of a motion for rehearing is a statutory prerequisite to petitioning for certiorari in the Georgia Supreme Court. Ga. Code Ann. §24-4536(h).

## REASONS FOR GRANTING THE WRIT

This case presents the singular question of where a national bank is "located" within the meaning of 12 U.S.C. §94 for purposes of defending transitory suits in state courts. This particular question can only arise in the state courts<sup>6</sup> and herein is untainted by any factual issues concerning "waiver" of the venue privilege.<sup>7</sup>

However, the very simplicity of the question should not obfuscate its import. The judgment of the Court of Appeals, which truncated the national bank venue privilege, is prototypical of the persistent assaults on 12 U.S.C. § 94 in which modern courts are presently indulging with disquieting frequency. This very year, this Court has already rejected two other purported

<sup>6</sup> 12 U.S.C. §94 independently regulates venue in federal courts, providing that suits against national banking associations "may be had in any district or Territorial court of the United States held within the district in which such association may be established . . . ." Although several federal courts consider the words "established" and "located" to be functionally interchangeable, the interpretative holding of such courts, as federal courts, must be restricted to the meaning of the word "established" in 12 U.S.C. §94. *See e.g., United States National Bank v. Hill*, 434 F.2d 1019 (9th Cir. 1970); *Northside Iron & Metal Co. v. Dobson and Johnson, Inc.*, 480 F.2d 798 (5th Cir. 1973); *McClung v. La Salle National Bank*, 387 F. Supp. 977 (S.D. Iowa 1975).

<sup>7</sup> The Court of Appeals commented:

"As to whether a national bank is 'located' in a county simply by setting up a branch to conduct general bank business, therein, it seems clear that it has manifested an intent to be found in that jurisdiction for purposes of suits arising out of any business conducted there." App. A-4.

Although this observation appears to broach the issue of waiver, it bears no relationship to the actual holding (*see* p. 4, *supra*; App. A-4) of the Court and is, in fact, tantamount to obiter dictum.

Moreover, the concept of waiver suggested by the Court of Appeals is independent of the facts of a particular case and is reviewable on appeal as a question of law. *See* n. 10, *infra*.

limitations on the scope of 12 U.S.C. § 94;<sup>8</sup> Petitioner respectfully submits that this is the expedient and opportune occasion for the Court to prevent further encroachment upon, and erosion of, the traditional mandate of that venue statute.

**A. The Interpretation of the Word "located" in 12 U.S.C. § 94 Is the Subject of Irresolute Conflict Among the States.**

Although the lower federal courts are in unanimous accord that a national bank is "established" under 12 U.S.C. § 94 only in that federal district in which its charter was issued,<sup>9</sup> an unfortunate variety of geographical referents has been associated with the word "located" by the state judiciary. Three different theories manifest this contemporary discord:

1. Certain courts have held that the words "established" and "located" are functionally synonymous and, following the federal interpretation of "established", have concluded that, absent intentional waiver, transitory suits in state courts can only be brought in the county in which the charter of the national bank was issued. *Gregor J. Schaefer Sons, Inc. v. Watson*, 26 A.D. 2d 659, 272 N.Y.Supp. 2d 790 (1966); *Prince v. Franklin National Bank*, 62 Misc. 2d 855, 310 N.Y. Supp. 2d 390 (1970); *Ebeling v. Continental Illinois National Bank & Trust Co.*, 272 Cal. App. 2d 724, 77 Cal. Rptr. 612 (1969).

2. A second theory has emerged which is premised not upon a purely interpretative analysis of the word "located", but rather

<sup>8</sup> See, *National Bank of North America v. Associates of Obstetrics and Female Surgery, Inc.*, — U.S. —, 96 S.Ct. 1632 (1976); *Radzanower v. Touche Ross & Co.*, — U.S. —, 96 S.Ct. 1989 (1976).

<sup>9</sup> See, e.g., *Leonardi v. Chase National Bank*, 81 F.2d 19 (2d Cir.), cert. denied, 298 U.S. 677 (1936); *Northside Iron & Metal Co. v. Dobson and Johnson, Inc.*, supra.

upon a notion of presumptive "waiver." The judicial adherents to this theory, while paying superficial homage to the general principle that a national bank is "located" only in the county in which its charter was issued, hypostasize a waiver of 12 U.S.C. § 94 by the creation of a branch bank, concluding therefrom that a national bank can be sued in any county in which it operates a branch bank as to actions arising out of its banking activity at such branch. *Lapinsohn v. Lewis Charles, Inc.*, 212 Pa. Super. 185, 240 A.2d 90, cert. denied 393 U.S. 952 (1968); *Security Mills of Asheville, Inc. v. Wachovia Bank & Trust Co.*, 281 N.C. 525, 189 S.E. 2d 266 (1972) (alternative holding.)<sup>10</sup>

3. The extreme position espoused by some courts rejects the synonymy of "established" and "located", and concludes that a national bank is "located" in any county in which it operates and maintains branches conducting general banking business, notwithstanding that it may be "established" only in its charter county. *Security Mills of Asheville, Inc. v. Wachovia Bank and Trust Co.*, supra; *Holson v. Gosnell*, 264 S.C. 619, 216 S.E.2d 539 (1975) cert. denied, 423 U.S. 1048 (1976); *Central Bank v. Superior Court*, 30 Cal. App. 3d 962, 106 Cal. Rptr. 912 (1973).<sup>11</sup>

<sup>10</sup> The waiver is "presumptive" because it automatically ensues from the creation of a branch bank without regard to the voluntary intention of the national bank. Thus alienated from the facts of each particular case, the theoretical legitimacy of this type of waiver is actually a question of law subject to review as such on appeal.

A variation of this theory postulates a "waiver" of the 12 U.S.C. §94 venue privilege as to actions arising out of any business conducted in the county in which suit is brought, whether or not branch banking is conducted in that county. See e.g., *Vann v. First National Bank*, 324 So.2d 94 (Fla. App. 1976).

<sup>11</sup> The Georgia Court of Appeals apparently subscribes to this last variation. See p. 4, supra; App. A-4.

As the "waiver" theory indicates, the modern trend of some courts is to achieve the net effect of permitting suits against national banks in most state counties without literal offense to the language and legislative history of 12 U.S.C. § 94. However, the practical result of this theory is functionally indistinguishable from that entailed by the extreme position that national banks are "located" in all counties wherein they operate branch banks, any differences between these theories being merely semantic ones.

Petitioner submits that this tripartite disharmony, thus far involving few states, can only become increasingly aggravated as other states consider the meaning of "located" in 12 U.S.C. § 94. The interpretative dialectic shows no signs of abating and can only be finally resolved by a determinative ruling of this Court.

#### B. The Court of Appeals' Interpretation of "located" Conflicts With Prior Decisions of This Court.

After superficial analysis, the Court of Appeals held that C&S, while "established" only in one federal district, is "located" in all counties wherein it operates and maintains branches conducting general bank business. App. A-4. Not only is this conclusion offensive to the purpose and the legislative history of 12 U.S.C. § 94,<sup>12</sup> but it also contravenes prior decisions of this Court. The most expansive of such decisions is the recent and oft-cited *Mercantile National Bank v. Langdeau*, 371 U.S. 555 (1963). In *Langdeau*, two national banks chartered in Dallas County, Texas, were sued in Travis County in accordance with lenient state venue provisions. The Texas Supreme Court rejected those banks' 12 U.S.C. § 94 defense on the alternative grounds that 12 U.S.C. § 94 was "permissive" or

<sup>12</sup> Discussed, §§ D and E, *infra*.

that it had been impliedly repealed.<sup>13</sup> Reversing the Texas Supreme Court, this Court held that 12 U.S.C. § 94 "must be given a mandatory reading," 371 U.S., at 562, and is "fully effective and must be recognized when [it is] duly raised." *Id.*, at 567. In rejecting the argument that 12 U.S.C. § 94 was "permissive," the Court noted:

"We would not lightly conclude that a congressional enactment has no purpose or function. We must strive to give appropriate meaning to each of the provisions of Title 12 and its predecessors. . . . Appellee, however, would have us hold that any state court could entertain a suit against a national bank as long as state jurisdictional and venue requirements were otherwise satisfied. *Such a ruling, of course, would render altogether meaningless a congressional enactment permitting suit to be brought in the bank's home county.* This we are unwilling to do, particularly in light of the history of § 57. . . ."

All of the cases in this Court which have touched upon the issue here are in accord with our conclusion that national banks may be sued only in those state courts in *the county where the banks are located.*" *Id.*, at 560-561 (emphasis added).

*Langdeau* evidences this Court's continuing affirmation that the word "located" in 12 U.S.C. § 94 designates *the* county of suit as *the home county*. See *First National Bank v. Morgan*, 132 U.S. 141 (1889). The phrase "home county" can have no other referent than the county in which the national bank was chartered; this fact implicitly entails the conclusion that a national bank cannot also be sued in any county wherein it operates branch banks. The *Langdeau* opinion, having issued some thirty years after the initiation of multi-county national bank branch-

<sup>13</sup> *Langdeau v. Republic National Bank*, 161 Tex. 349, 341 S.W. 2d 161 (1960), *rev'd sub nom. Mercantile National Bank v. Langdeau*, 371 U.S. 555 (1963).

ing,<sup>14</sup> cannot be facily dismissed as quaint nineteenth century obsolescence.<sup>15</sup>

While there are two commonly acknowledged limitations on the scope of 12 U.S.C. § 94, neither is relevant to the present case.<sup>16</sup> Furthermore, this Court has never countenanced interference with 12 U.S.C. § 94 for any state "policy" reasons; it is solely "[t]he right of Congress to determine to what extent a state court shall be permitted to entertain actions against national banks, and how far these institutions shall be subject to state control." . . . *Van Reed v. People's National Bank*, 198 U.S. 554, 557 (1905). This congressional prerogative precludes, as a method of statutory construction, the Court of Appeals' effort to interpret 12 U.S.C. §94 "in harmony with the laws of venue of this state." App. A-4. *Van Reed* implicitly postulates, as a matter of basic federalism, that the harmony of federal and state statutes encompassing similar subject matter is irrelevant and that the state judiciary is neither empowered to arbitrate disparities between such statutes according to their supposed relative merits, nor authorized to reformulate federal statutes in accordance with

<sup>14</sup> The McFadden Act of 1927 first permitted a national bank to establish branches within its charter location. Act of February 25, 1927, ch. 191 §7, 44 Stat. 1228, as amended, 12 U.S.C. §36 (1970). In 1933, national banks were effectively authorized to engage in multi-county branch banking. Act of June 16, 1933, ch. 89, §23, 48 Stat. 189, 190, as amended, 12 U.S.C. §36 (1970).

<sup>15</sup> A common attack on the restrictive interpretation of 12 U.S.C. §94 is based upon the antiquity and alleged irrelevance of that statute in the twentieth century. See, e.g., *Holson v. Gosnell*, *supra*, 264 S.C. at 620, 216 S.E. 2d at 540.

<sup>16</sup> The first limitation, restricting the applicability of 12 U.S.C. §94 to transitory actions, was initially validated in *Casey v. Adams*, 102 U.S. 66 (1880) where the Court noted:

"Local actions are in the nature of suits *in rem*, and are to be prosecuted where the thing on which they are founded is situated. To give the act [the predecessor to 12 U.S.C. §94] of Congress the construction now contended for would be in effect to declare that a national bank *could not be sued at all in a local action where the thing about which the suit was brought*

its own normative philosophy; "such a situation is a matter for Congress to consider." *Mercantile National Bank v. Langdeau*, *supra*, 371 U.S. at 563.

In short, this Court has repeatedly enunciated and consistently respected the restricted venue of 12 U.S.C. § 94, and has never sanctioned efforts to limit its effect for reasons of inconvenience to non-national bank litigants or for any other putatively desirable purposes. See, *Michigan National Bank v. Robertson*, 372 U.S. 591 (1963).

### C. The Court of Appeals Has Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Authoritatively Settled by This Court.

Notwithstanding implicit recognition that transitory suits against national banks can only be prosecuted in a single county, this Court has never explicitly defined the meaning of the word

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*was not in the judicial district of the United States within which the bank was located."* *Id.*, at 68 (emphasis added).

The *Casey* exception is nothing more than a logical incident of 12 U.S.C. §94; having specifically enacted a statute authorizing suits against national banking associations in both federal and state courts, Congress could hardly have intended its venue provision to completely preclude certain suits altogether. However meritorious or justifiable the *Casey* exception may be, it is immaterial to the resolution of this case; the Court of Appeals did not deem it necessary to consider how an action for conversion can remotely qualify as a "local" action.

The second limitation is not strictly an exception to the applicability or scope of 12 U.S.C. §94, but merely an exposition of the well-settled principle that 12 U.S.C. §94 venue, being a privilege, can be voluntarily waived if not asserted in a timely fashion. *First National Bank v. Morgan*, *supra*. The complexities of waiver are myriad, but need not be considered here since the Court of Appeals, while commenting on waiver, did not designate this concept as the basis for its holding. See n. 7, *supra*. Moreover, the recognized waiver limitation involves waiver under the facts of a particular case, and is thus quite different from the "presumptive" waiver discussed n. 10, *supra*.

"located" in 12 U.S.C. § 94. In *Mercantile National Bank v. Langdeau*, *supra*, the Court was not called upon to resolve any potential dichotomy between "established" and "located" since neither of the national banks therein engaged in multi-county operations and each was thus "established" and "located" in a single county. Therefore, the questions of presumptive waiver and the geographical referent of "located" remain undecided.

The federal question at issue, measured by any standard of importance, is undeniably a crucial one. As previously noted,<sup>17</sup> the state courts have long been floundering in the morass of 12 U.S.C. § 94, and the meaning of "located" has been productive of much confusion. The issue here, although a narrow one, is indisputably "beyond the academic or the episodic," *Rice v. Sioux City Cemetery*, 349 U.S. 70, 74 (1955); cases turning on the interpretation of the word "located" in 12 U.S.C. § 94 have proliferated in the state appellate courts,<sup>18</sup> and these appellate cases undoubtedly reflect even greater activity at the significant but unreported trial court level.

The Court this year granted certiorari in *Radzanower v. Touche Ross & Co.*, *supra*, to resolve a dispute between the Second and Ninth Circuits and the Third Circuit<sup>19</sup> on the question of whether the provisions of 12 U.S.C. § 94 were impliedly repealed by the venue sections of the Securities Exchange Act. By its decision in *Radzanower*, this Court manifested concern about the integrity and contemporary viability of 12 U.S.C. § 94. Yet *Radzanower* dealt only with federal securities actions against national banks, a "narrow and infrequent category" of litiga-

<sup>17</sup> See § A., *supra*.

<sup>18</sup> See cases discussed pp. 6-8, *supra*.

<sup>19</sup> See, *Bruns, Nordeman & Co. v. American National Bank and Trust Co.*, 394 F.2d 300 (2d Cir.), *cert. denied*, 393 U.S. 855 (1968); *United States National Bank v. Hill*, *supra*; *Ronson Corp. v. Liquifin Aktiengesellschaft*, 483 F.2d 852 (3d Cir. 1973).

tion. *Id.*, 96 S.Ct., at 1994. On the other hand, upon the interpretation of the word "located" in 12 U.S.C. § 94 depends the venue of thousands of transitory actions brought against national banking associations in a multitude of state courts. This is, of course, not to demean the importance of *Radzanower*, but to emphasize the comparative impact which 12 U.S.C. § 94 has upon suits brought against national banks in state courts and the relative importance of an immediate and definitive decision to reconcile the unfortunate melange of rationales underlying the various interpretations of "located".

Most importantly, due regard must be accorded to the policy of Title 12 that "[n]ational banks are quasi-public institutions, and for the purpose for which they are instituted are national in their character." *Van Reed v. People's National Bank*, *supra*, 198 U.S. at 557. It is axiomatic that disparate treatment of national banking associations in different states is completely and inalterably inconsistent with the implicit congressional purpose to ensure uniform treatment of national banking associations throughout the entire country. Such uniformity is presently being thwarted with respect to venue, one of the privileges most fundamental to the federal judicial system. There is a pronounced anomaly when a New York national bank can be sued only in the county wherein it was chartered, a Georgia national bank can be sued in all counties in which it maintains branches, and a Pennsylvania national bank can be sued in all counties in which it maintains branches, but only as to actions arising out of business conducted at such branches. It is peculiarly within the province of this Court to resolve such anomalies affecting important rights of federally-chartered institutions whose amenity to state control should be, and heretofore has been, determined by federal law and not by the laws of the several states.

**D. The Court of Appeals Interpretation of "located" Is Antithetical to the Congressional Purpose Underlying 12 U.S.C. §94.**

This Court has consistently reiterated that 12 U.S.C. §94 was "prescribed for the convenience of those [national banking] institutions, and to prevent interruption in their business that might result from their books being sent to distant counties in obedience to process from state courts." *First National Bank v. Morgan*, *supra*, 132 U.S. at 145. The policy recognized by *Morgan* in 1889 has remained fully effective notwithstanding progressively modernized systems of communication and transportation and incessant charges of archaism.<sup>20</sup> See *Mercantile National Bank v. Langdeau*, *supra*, 371 U.S. at 561-562, n. 12; *Radzanower v. Touche Ross & Co.*, *supra*, 96 S.Ct., at 1994.

The proposition that a national bank can be "located" in any county wherein it conducts branch banking, undermines this congressional purpose by fostering inconvenience to national banks and encouraging interruption in their business. Such a result is typified by this very case. The relevant transactions occurred in Chatham County, Georgia; all of the business records and documentation, and each C&S employee who has knowledge of the facts, are located or domiciled in Chatham County. The prosecution of this case in DeKalb County, Georgia will undoubtedly impose undue burden, expense and inconvenience upon C&S, all to the benefit and expedience of Bougas, and all in untenable disregard of the underlying purpose of 12 U.S.C. §94.

The preservation of this congressional solicitude for the convenience of national banks is no less important when judged by the realities of contemporary national bank operations. National banks are forced into multi-county operations, if only for the

<sup>20</sup> See n. 15, *supra*.

purposes of adequately competing with state-chartered banks. Accordingly, this Court's repeated declarations on the "mandatory" nature of 12 U.S.C. §94<sup>21</sup> are of small avail if this mandate is without substance and is easily circumvented by the expedient of interpreting the word "located" to encompass, for all practical purposes, all counties in which a national bank does business.

**E. The Court of Appeals Interpretation of "located" Is Completely Inconsistent With the Legislative History of 12 U.S.C. §94.**

The perfunctory analysis of 12 U.S.C. §94 by the Court of Appeals is further evident in the following proposition:

"The original National Banking Act of 1863 did not make mention of suits against national banks in state courts. The provisions of the Act relating to suits in state courts were placed in the statute by later legislation. [citation omitted]. Apparently Congress intended a different rule to apply as between suits brought in federal courts (where the bank must be established in the district) and suits brought in state courts (where the bank need only be located in the county or city of the court having similar jurisdiction in similar cases). Otherwise, Congress would hardly have substituted 'located' for 'established' in defining venue of a suit brought in state court." App. A-3 (emphasis added).

That this conclusion is nothing more than academic speculation is demonstrated by even a casual perusal of the legislative history of 12 U.S.C. § 94. Admittedly, the original National Banking Act of 1863,<sup>22</sup> whether deliberately or by oversight, did not

<sup>21</sup> See, e.g., *National Bank of North America v. Associates of Obstetrics and Female Surgery, Inc.*, *supra*.

<sup>22</sup> Act of February 25, 1863, ch. 58, 12 Stat. 665.

contain any provision permitting suits against national banks in state courts. Such suits were first authorized by Section 57 of the National Bank Act of 1864,<sup>23</sup> in the state, county and municipal courts where a national bank is "located". In interpreting that crucial word it should be remembered that Section 57 was not a schematically independent statute; rather it must be reconciled with the remainder of that Act. It is thus noteworthy that Section 6 of the 1864 Act required that a national bank's organization certificate designate the state, territory, or district and *the particular county* in which it operated.<sup>24</sup> Similarly, Section 8 of the Act additionally stipulated that a national bank's "usual business shall be transacted at an office or banking house located in *the place* specified in its organization certificate."<sup>25</sup>

The upshot of these sections is that at the time Section 57 of the National Bank Act of 1864 was enacted, the activities of national banking associations were restricted by Sections 6 and 8 of the Act to *one* particular location. Not until the enactment of the McFadden Act of 1927 were national banks even permitted to establish branches within their charter locations, and not until 1933 did Congress sanction national bank branches beyond the charter location.<sup>26</sup>

Because of the fact that in 1864 a national bank was permitted only one "location", namely the single place specified in its organization certificate, there is no statutory basis for inter-

<sup>23</sup> Act of June 3, 1864, ch. 106 §30, 13 Stat. 99, 116-117, amended by Rev. Stat. §5198 (1875), as amended, 12 U.S.C. §94 (1970).

<sup>24</sup> 13 Stat. 101 (1864), amended by Rev. Stat. § 5134 (1875), as amended, 12 U.S.C. §22 (1970).

<sup>25</sup> §8, 13 Stat. 102 (1864), amended by Rev. Stat. §5190 (1875), as amended 12 U.S.C. §81 (1970) (emphasis added).

<sup>26</sup> See n. 14, *supra*.

preting the word "located" as having multi-county reference. The Court of Appeals' hypothesis that Congress deliberately chose that word to permit suits against national banks in any county in which they conducted branch banking can only be based upon the indefensible presumption that the Congress anticipated by some sixty years the advent of multi-county branch banking and formulated its statutory language accordingly.<sup>27</sup>

#### F. The Court of Appeals Decision Is Appropriate for Review.

Although the judgment of the Court of Appeals was not dispositive of the merits of this case, it is the type of ancillary decision that this Court can review on a petition for certiorari. The appellate record herein is virtually identical to that in *Mercantile National Bank v. Langdeau, supra*, where this Court noted:

"The question of our appellate jurisdiction is quite similar to the one considered in *Construction Laborers v. Curry, ante*, p. 542, although there the jurisdiction of any and all state courts was at issue and here the inquiry is only as to which state court has proper venue to entertain an action against two national banks. *Nonetheless, a substantial*

<sup>27</sup> There is no reason to suspect that Congress, between the years 1864 and the present, had any intention of repealing or limiting the coverage of 12 U.S.C. §94. See, *Mercantile National Bank v. Langdeau, supra*, 371 U.S. at 565. Indeed, there is every reason to suppose that the Congress remains completely satisfied with the original purposes and scope of 12 U.S.C. §94. As recently as 1959, Congress overhauled national bank statutes by legislation which was prefaced by the following:

"An Act to amend the national banking laws to *clarify or eliminate ambiguities, to repeal certain laws which have become obsolete, and for other purposes.*" Public Law No. 86-230, 73 Stat. 457 (1959) (emphasis added).

Since this piece of legislation did not modify the provisions of 12 U.S.C. §94 the inference can be drawn that the traditionally restrictive interpretation of 12 U.S.C. §94 remains viable.

*claim, appealable under state law, is made that a federal statute, rather than a state statute, determines in which state court a national bank may be sued and, as in Curry, prohibits further proceedings against the defendants in the state court in which the suit is now pending. This is a separate and independent matter, anterior to the merits and not enmeshed in the factual and legal issues comprising the plaintiff's cause of action. Moreover, we believe that it serves the policy underlying the requirement of finality in 28 U.S.C. § 1257 to determine now in which state court appellants may be tried rather than to subject them, and appellee, to long and complex litigation which may all be for naught if consideration of the preliminary question of venue is postponed until the conclusion of the proceedings."* *id.*, 371 U.S. at 557-558. (Emphasis added).<sup>28</sup>

The jurisdictional parameters enunciated in *Langdeau* clearly encompass this particular case. The venue question herein is anterior to the merits and is unsullied by intricate factual issues. Here, as in *Langdeau*, review of the Court of Appeals decision is essential to protect C&S from the unnecessary burden and expense of defending the merits of a suit that "may all be for naught," that regardless of its outcome would abrogate C&S's important statutory rights, and that would be substantially removed from the geographical situs of all records and witnesses.

### CONCLUSION

The decision of the Court of Appeals below is devoid of substantive basis in the judicial or legislative history of 12 U.S.C. § 94, and is also offensive to prior decisions of this Court. It is

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<sup>28</sup> This same jurisdictional policy apparently underlies *National Bank of North America v. Associates of Obstetrics and Female Surgery, Inc.*, *supra*, where the Court granted certiorari to review a judgment of the Utah Supreme Court affirming a lower court's denial of a motion to dismiss based on 12 U.S.C. §94.

revelatory of the temptation experienced by some state courts to abrogate protections that Congress has chosen to confer upon national banks. This temptation can only grow stronger, buoyed by this Court's implicit imprimatur, unless this Court reviews the issue and expressly confirms the statutory rights asserted by C&S.

Wherefore, for the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

DANIEL B. HODGSON

WILLIAM C. HUMPHREYS, JR.

PETER Q. BASSETT  
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# APPENDIX

— A-1 —

## OPINION

(Court of Appeals, State of Georgia Filed May 6, 1976)

51622. The Citizens and Southern National Bank v. Bougas

M-15

Marshall, Judge

This appeal arises from a suit filed by Bougas against The Citizens and Southern National Bank in the State Court of DeKalb County complaining that the C & S Bank unlawfully redeemed and converted to its own use a savings bond owned and pledged by Bougas to the bank as security for an indebtedness to the bank, allegedly the responsibility of Bougas' son claimed by the bank to be overdue. The bank answered the complaint and concurrently therewith filed a motion to dismiss the complaint on grounds of improper venue, maintaining that suit against it would lie only in Chatham County. The trial court denied the motion to dismiss but granted a certificate for immediate review. Additionally, a motion by the bank for an interlocutory appeal was granted by this court. The sole issue pending before the court in this hearing is whether venue of the pending cause of action lies in DeKalb County. *Held:*

Appellee Bougas asserts that though C & S Bank is a national bank, it is located at numerous sites in DeKalb County furnishing full service. He submits that a suit can be prosecuted in any court of competent jurisdiction in any county in which C & S is located and operating branch banks. Appellant C & S Bank rejoins that as a national bank, venue against it is governed by the provisions of Section 94 of Title 12 of the United States Code. It contends that under the provisions of that statute, C & S may be sued only in Chatham County, the county in

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which its charter was issued and the location of its principal place of business.

Both parties agree that the focal point of this appeal is the correct interpretation and application of 12 USC §94. That statute, in pertinent part, provides: "Suits, actions, and proceedings against any association under this Title may be had in any district court, or territorial court of the United States held within the district in which said association may be established, or in any state, county, or municipal court in the county or city in which such association is located having jurisdiction in similar cases."

The parties are further agreed that the C & S Bank, as a national bank, is an "association" within the meaning of the federal statute. There is no dispute that the suit must be brought in a district or a county in which the bank is "established" or "located." *Mercantile National Bank v. Langdeau*, 371 U. S. 555 (83 SC 529, 9 LE2d 523). The point of departure occurs when a suit is brought in a state court whether venue lies in the county of "establishment" or in a county in which the bank is "located."

There are cases on each side of the question. It has been concluded that the meaning of "located," including the venue of a suit against a national bank, would be in any county of the state in which the bank has branches either on the theory that a branch bank "locates" the bank in that county or alternatively that by doing business in the county, the bank has waived its exclusive venue. See: *Security Mills of Asheville, Inc. v. Wachovia Bank and Trust Co.*, 281 NC 525, 189 SE2d 266; *Holson v. Gosnell* (So. Car.), 216 SE2d 539; *Frankford Supply Co. v. Matteo*, 305 F.Supp., 794; *Laponshon v. Lewis Charles, Inc.*, 212 Pa. Super 185, 240 A2d 90. See also: *Stockholders Protective Committee v. First Jersey Bank*, 133 NJ Super 462, 337 A. 2d 390.

In the federal courts, and in some courts considering the issue, the question over the years had been settled adversely to the contention advanced by Bougas. See: *Mercantile National Bank v. Langdeau*, supra; *Michigan National Bank v. Robertson*, 372 U. S. 591 (7 LE2d 961, 83 SC 914); *Northside Iron and Metal Co., Inc. v. Dobson and Johnson, Inc.*, 480 F2d 798; *First National Bank of Boston v. U. S. District Court of Central District of California*, 468 F2d 180; *Helco, Inc. v. First National City Bank*, 470 F2d 883; *United States National Bank v. Hill*, 434 F2d 1019; *Levin v. Great Western Sugar Co.*, 274 F.Supp. 974; *Odette v. Shearson, Hamil and Co., Inc.*, 394 F.Supp. 946; *Prince v. Franklin National Bank*, 310 NYS2d 390; *Shaefer Sons, Inc. v. Watson*, 26 AD2d 659, 272 NYS 2d 790.

The original National Banking Act of 1863 did not make mention of suits against national banks in state courts. The provisions of the Act relating to suits in state courts were placed in the statute by later legislation. See: *Mercantile National Bank v. Langdeau*, 371 U. S. 555, supra. Apparently Congress intended a different rule to apply as between suits brought in federal courts (where the bank must be *established* in the district) and suits brought in state courts (where the bank need only be *located* in the county or city of the court having similar jurisdiction in similar cases). Otherwise, Congress hardly would have substituted "located" for "established" in defining venue of a suit brought in state court.

A close examination of the federal cases dealing with the dichotomy of "established" and "located" discloses that in each of those cases the federal court was dealing with its own venue, i.e., was the bank established (under its charter) within the federal court's district. E.g., *Helco, Inc. v. First National City Bank*, 470 F2d 883, supra. None of the cases were dealing with the venue of a suit brought in a state court in a county in which the bank was operating a branch facility but in which

it was not "established." In order to accept venue, the federal courts were required, under the express language of § 94, to conclude that a bank must be "established" in its district, and of course, it would be "located" there also. We find these cases to be inapposite to the problem presented by this case, because in a state court the bank need not be both "established" and "located" in the county.

As to whether a national bank is "located" in a county simply by setting up a branch to conduct general bank business, therein, it seems clear that it has manifested an intent to be found in that jurisdiction for purposes of suits arising out of any business conducted there. *Lapinsohn v. Lewis Charles, Inc.*, supra.

"We conclude that when a national bank, 'established' in this state, operates and maintains in counties other than the county of its principal office, branches at which it conducts its general banking business, the corporation is present at all times each such branch and is 'located' therein within the meaning of this Act of Congress. Thus, it is subject to suit in a state court in such county, otherwise having jurisdiction, just as it is in the county wherein its principal office is located." *Security Mills v. Asheville v. Wachovia B & T Co.*, supra, at page 271.

Such an interpretation is in harmony with the laws of venue of this state which provide that a corporation may be sued on contract in any county in which the contract was made or was to be performed; and as to torts, it may be sued in the county where the cause of action originated. See: Ga. L. 1968, pp. 565, 584; 1975, pp. 583, 857 (Code Ann. § 22-404 (c) and (d)). Insofar as the footnote found in *Carswell v. Cannon*, 110 Ga. App. 315 (138 SE2d 468), at page 317, may imply a contrary result, we find the language therein to be obiter dicta, not persuasive and decline to follow its lead.

*Judgment affirmed. Pannell, P. J., and McMurray, J., concur.*

(Order, filed August 22, 1975)

In the State Court of DeKalb County  
State of Georgia

Nick Bougas

vs.

The Citizens and Southern National Bank

Civil Action  
File No. C77256

### ORDER

Defendant's motion to dismiss, having been filed in the above-style case and having come on for hearing before this Court, after hearing argument of counsel and considering the papers on file in the case it is hereby ordered:

That the defendant's motion to dismiss filed in the above-style case be denied.

This the 22 day of August, 1975.

/s/ J. O. MITCHELL

Judge, DeKalb State Court

(Judgment, filed May 6, 1976)

Court of Appeals of the  
State of Georgia

Atlanta, May 6, 1976

The Honorable Court of Appeals met pursuant to adjournment. The following judgment was rendered:

51622. The Citizens and Southern National Bank v. Nick Bougas

This case came before this court on appeal from the State Court of DeKalb County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. Pannell, P. J., Marshall and McMurray, JJ., concur.

Bill of costs \$30.00.

Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta

Sep. 20, 1976

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia, and that ..... paid the above bill of costs.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

MORGAN THOMAS  
Clerk

(Order, filed May 21, 1976)

Court of Appeals of the  
State of Georgia

Atlanta, May 21, 1976

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed:

51622. The Citizens and Southern National Bank v. Bougas.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta

May 21, 1976

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

MORGAN THOMAS  
Clerk

(Order, filed June 30, 1976)

Supreme Court of Georgia

Atlanta, June 30, 1976

The Honorable Supreme Court met pursuant to adjournment.  
The following judgment was rendered:

31402. Citizens and Southern Bank v. Nick Bougas.

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied. All the Justices concur except Hill, J., dissents and Nichols, C. J., disqualified.

Supreme Court of the State of Georgia  
Clerk's Office, Atlanta

July 29, 1976

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

JOLINE B. WILLIAMS  
Clerk

Case No. 51622  
Court of Appeals of Georgia

Remittitur from Supreme Court

Filed in office

Clerk, Court of Appeals of Georgia

(Order, filed July 15, 1976)

Supreme Court of Georgia

Atlanta, July 15, 1976

The Honorable Supreme Court met pursuant to adjournment.  
The following order was passed:

31402. Citizens and Southern National Bank v. Nick Bougas.

Upon consideration of the motion for a reconsideration filed in this case, it is ordered that it be hereby denied. All the Justices concur, except Ingram and Hill, JJ., dissent and Nichols, C. J., disqualified.

Supreme Court of the State of Georgia  
Clerk's Office, Atlanta

September 17, 1976

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

HAZEL E. HALLFORD  
Deputy Clerk